

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7152 OF 2006

State of Maharashtra & Ors. .. Petitioners

V/s

Sandeep Subhash Dangmali .. Respondent

Mr.V.P. Vanarse, A.G.P. for the Petitioners.

Mr.N.V. Bandivadekar for the Respondent.

CORAM : H.L. GOKHALE & V.M. KANADE, JJ.

DATE : 11TH JANUARY 2007

P.C. :

1. Heard Mr.Vanarse, A.G.P. for the Petitioners and Mr.Bandivadekar for the Respondent.

2. The petition seeks to challenge the order passed by the Maharashtra Administrative Tribunal on Original Application No.145 of 2005 which was filed by the Respondent herein.

3. The Respondent had appeared in the interview conducted by the Superintendent of the Regional Mental Hospital at Yerwada, Pune for filling the post of male attendant. That was in pursuance to the

advertisement/requisition which the Superintendent had given. The interviews were held on 17th and 23rd December 2003, but the results of the interviews were not being declared. Those interviews were held for filling the vacancies of the backward class category.

4. Inasmuch as nearly 8-9 months passed after the interviews and since the results were not declared, an organisation representing the backward class candidates wrote to the Superintendent on 15th October 2004 asking him to declare the results. The Superintendent replied by his letter dated 30th October 2004 that in view of the Government Circular dated 1st August 2003, even while filling the backlog of the backward class candidates, priority is to be given to the Muster Assistants, compassionate appointees, children of freedom fighters, project affected persons, temporary employees and candidates appointed for the temporary purposes at the time of census. The letter however did not say as to when the results will be declared, but impliedly the application was rejected.

5. It is therefore that this Original Application No.145 of 2005 was filed and the prayer was made that this communication dated 30th October 2004 be set aside. It is this application which has been allowed by the Tribunal and the order of the Tribunal merely directs

that the results of the interviews held on 17th and 23rd December 2003 be declared.

6. Mr. Vanarse, A.G.P. appearing for the State, drew our attention to the fact that the Government policy was to give priority to the aforesaid categories even while filling the backlog. That was the Government policy decision of 1st August 2003 and the interviews were held in December 2003. He drew our attention to the reply which was filed by the Petitioner to the original application. In para 5 of this reply, in fact, it is stated that when the interviews were held, some 1200 candidates appeared. In para 3 of this reply, it is stated that in view of the Government policy decision of 1st August 2003, requisition was forwarded to the Collectors of various districts to provide the list of such eligible candidates. Thereafter it is categorically stated that the Collectors have replied that they do not have the candidates as per the above requirement and they issued the no objection certificate. In any case, in view of this information, the correctness of which cannot be doubted by the Petitioners, the selection process could not be faulted by the Petitioners herein. On the one hand, they are saying that candidates of such specified categories are not available and, on the other hand, they are finding fault with the decision of the Administrative Tribunal

which merely says that the results be declared.

7. It is material to note that the Respondent also belongs to a backward class category. He is born on 1st November 1974 and is already above 32 years of age. The Petitioners had taken out a draw to fill the backlog of the backward class candidates. It was their business to find out whether there are any specified category candidates available. Inasmuch as they did not find any which they candidly state in their affidavit, the Respondent candidate could not be faulted if he wanted a declaration that the select list be released. That is what the Tribunal has done.

8. It is also material to note that after the impugned order of the Tribunal was passed on 30th January 2006, the Respondent herein took out a contempt petition since the order was not being implemented. It has subsequently been implemented and the results of the interviews have been declared on 22nd June 2006. This petition has been filed much later, i.e. on 6th October 2006. Though Mr.Bandivadekar has submitted that the petition should not be entertained inasmuch as the impugned order has been acted upon, we have still gone into the submissions on behalf of the Petitioners since it was submitted by Mr.Vanarse that although the order has been acted upon, the errors therein, which the

Petitioners want to point out, be looked into. As stated above, for the reasons stated herein above, we do not find any error in the impugned order. As stated above, the results of the interviews have been declared, Mr.Bandivadekar, learned counsel for the Respondent, has still stated that he has no objection as such if the candidates, who are to be given preference in accordance with the Government Circular / decision dated 1st August 2003, are given preference. His submission, however, is that those persons ought to be from this select list and not from outside. He therefore very fairly states that although the Respondent is at Sr.No.1 in the select list, if there is any such other persons from the preferential categories in the select list at a lower position, he cannot deny such a person being given a preference over the Respondent. Mr.Vanarse has submitted that this preference cannot be restricted only to the persons in the select list. We could have examined this submission provided any such persons were available and any such recommendations had been made in reasonable time. In the instant case, the interviews were held way back in December 2003. It is stated by the Petitioners themselves before the Administrative Tribunal that the concerned Collectors did not have the candidates as per the requirements and, therefore, they issued the no objection certificates. More than three years have gone after the interviews were conducted.

The Respondent also belongs to a backward class. He has certain legitimate expectations in view of his getting the first rank in the interview. Assuming that the Petitioners wanted some other preferential candidates to be considered, everything had to be done within some reasonable time. In our view, more than three years having gone from the date of the interview, the claim of the Respondent cannot be negated.

9. In any case, we do not find any error in the decision arrived at by the Tribunal. Petition is therefore rejected.

(H.L. GOKHALE, J.)

(V.M. KANADE, J.)